

### III. Remarks

Reconsideration and allowance of the subject application are respectfully requested.

Claims 1-7 and 8-13 are pending in the application. Claims 1, 7 and 13 are independent.

These claims have been amended for clarity with respect to the specification and drawings, and not in response to any statutory requirement.

Claims 1-3, 5-11 and 13 were rejected under 35 U.S.C. 102(b) as being clearly anticipated by Forney. Applicant respectfully traverses this rejection for the reasons now following.

Independent Claim 1 recites a device for retaining a tongue comprising a flange adapted for insertion in a mouth. Forney, on the other hand, teaches a tongue retaining device whereby certain embodiments include a flange 40 attached to a tongue housing 10 to position the housing by contacting the subject's face, thereby maintaining the tongue in either a normal or an extended position (see paragraph 2, lines 40-44). Forney specifically states at paragraph 5, lines 1-2, that the flange is attached to the exterior of the housing and is of sufficient size to not easily slip through the lips or teeth of a subject. Rather, as stated at paragraph 5, lines 40-42, the flange in Forney rests against the face of the subject, i.e. against the (outer) lips, and/or surrounding tissue. By reciting in claim 1 (as now amended) that the flange of the present invention is adapted for insertion in a user's mouth there is no need for any extension such as seal opening 30 as taught in Forney, which is comprised of a compliant material and is joined to the tongue housing 10 (see paragraph 3, lines 53-65). Thus, in the present invention, there is no portion of the tongue retention device which when inserted into a user's mouth extends past the user's teeth into the oral cavity.

Dependent Claim 2 is not anticipated by Forney for the reasons given for Claim 1 above. In any event, Forney does not teach a tongue retaining device having a flange and a protrusion formed as a unitary body.

Forney teaches a tongue housing 10, a flexible vacuum reservoir 20, and, in one embodiment, a seal opening 30 formed as an integral unit (see paragraph 4, lines 48-53).

However, Forney teaches the attachment of flange 40 as a separate unit. For example, Forney states at paragraph 3, lines 34-37, "A flange 40 is attached to the housing 10". Also, at paragraph 4, lines 68 to paragraph 5, line 1 that "The flange 40 is attached to the exterior of the housing 10". Further, at paragraph 5, lines 16-17, Forney states "The flange 40 is preferably molded from a thin sheet of material". Finally, at paragraph 5, lines 49-51, Forney states "The flange 40 ... is a simple collar 40 prime cut from a flat plate of rigid material". Thus, it is respectfully submitted that Forney does not teach a tongue retaining device having a flange and a protrusion formed as a unitary body.

For the reasons given for Claim 1 above, dependent Claims 3, 4 (no objection) and 5 are not anticipated by Forney.

Dependant claim 6 has been amended to include "or alveolar ridges if teeth are absent". Support for such amendment is set out in the disclosure at a number of locations, and it was clearly contemplated by the inventor that the present invention was to be inserted into a person's mouth behind the lips and in advance of teeth and at a minimum in advance of the alveolar ridge (if no teeth are present). Specifically, on page 10, lines 4-8, it states "In addition to providing treatment for sleep apnea, the tongue retention device of the present invention may also be utilized in application regarding the treatment of bruxism (the grinding of teeth while sleeping) and thereby TMJ muscle point for both those with teeth and without teeth". In addition, on page 8, lines 23-25, it states "The curved portion 30 may be adjusted to fit the user's jaw line so that during use the device comfortably fits between the user's teeth and lips. Still further, the overall size of the flange 14 may be adjusted by trimming to accommodate the sizes of different person's mouths".

Thus, in view of the above passages, the inventor clearly contemplated that the device be utilized in the mouth such that flange 14 either abuts the user's teeth or the user's gums (alveolar ridges) for users without teeth.

Dependent Claim 6 is not anticipated by Forney for the reasons given for Claim 1 above. In any event, Forney does not teach a flange further adapted to be received between a person's lips and teeth/alveolar ridge. As stated above, the flange 40 in Forney rests on the subject's face,

*i.e.* on the exterior portion of the subject's lips, rather than on the interior portion of the subjects lips between such lips and teeth/alveolar ridge as now recited in claim 6.

With respect to claim 7, independent Claim 7 teaches a tongue retention device comprising a flange and a bulb formed of a unitary body. As stated above in respect of claim 2, the flange in Forney is specifically disclosed as having a separate unit which is attached to the tongue housing. Thus, the salient claimed feature in Claim 7, namely the flange and bulb being for formed of a unitary body, is nowhere disclosed or suggested by Forney.

For the reasons given for Claim 2 and Claim 7 above, dependent Claim 9 is not anticipated by Forney.

For the reasons given for Claim 2 and Claim 7 above, dependent Claim 10 is not anticipated by Forney.

Dependent claim 11 has been amended to include "or alveolar ridges if teeth are absent". For the reasons given for claim 6 above, it was clearly contemplated by the inventor that the device of the present invention be used by persons with or without teeth.

For the reasons given for Claim 2 and Claim 7 above, dependent Claim 11 is not anticipated by Forney.

Independent Claim 13 recites a novel combination of steps for retaining a tongue in a predetermined position, including the step of positioning said tongue retention device between a user's lips and teeth. As stated above for Claim 1, Forney does not teach a tongue retaining device having a flange adapted to be received between a person's lips and teeth. Forney teaches a method of retaining a tongue which includes the step of placing a flange connected to the housing against a subject's face (see Forney Claim 22). Thus, Claim 13 is not anticipated by Forney.

Claims 4 and 12 were rejected as being unpatentable over Forney in view of Alvarez, for the reasons noted at pages 2 to 3 of the Office Action. Applicant respectfully traverses this rejection for the reasons now following.

Claim 4 recites a device for retaining a tongue comprising a flange adapted for insertion in a mouth constructed of a pliable material chosen from the group consisting of polyethylene, urethane, silicon and polyvinylchloride. Neither Forney nor Alvarez discloses or suggests, when taken individually or in combination, the claimed combination of features in Claim 4. In particular, neither art teaches a flange adapted for insertion in a mouth. Forney teaches a flange which contacts the subject' face. Alvarez teaches a shell structure shaped to be received and retained on the tongue sleeve and positioned just forward of the user's lip or lips (see paragraph 2, lines 27-29). Alvarez further states at paragraph 6, lines 22-24, "a shield or other retention element is provide, shaped to be retained outwardly of the user's lower lip". Accordingly, the salient claimed feature of Claim 4, that is, a flange adapted for insertion in a mouth, is nowhere disclosed or suggested by the cited art. Thus, the cited art fails to teach the unique combination of features in Claim 4.

With respect to Claim 12, the salient feature in this claim is that the flange and the bulb are formed of a unitary body constructed of a pliable material chosen from the group consisting of polyethylene, urethane, silicon and polyvinylchloride.

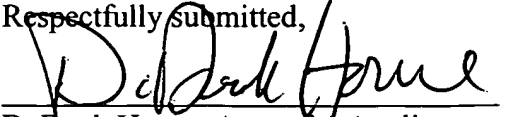
As discussed above with respect to Claim 2 and Claim 7, the flange in Forney is a separate unit. In Alvarez, a tongue retention device is taught comprising a tongue sleeve having a shield structure shaped to be received and retained on the tongue sleeve. Alvarez states at paragraph 6, lines 27-29 "The tongue sleeved and shield are separate parts to be relatively adjustable for mouth and tongue comfort." Accordingly, the salient feature of Claim 12, that is, that the flange and bulb are formed of a unitary body, is nowhere disclosed or suggested by the cited art.

In view of the above amendments and remarks, it is believed that this application is now in condition for allowance, and a Notice thereof is respectfully requested.

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Respectfully submitted,

  
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